

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: LITHIUM ION BATTERIES
ANTITRUST LITIGATION

Case No. 13-md-02420 YGR DMR

MDL No. 2420

**STIPULATION AND [PROPOSED]
ORDER RE TRANSLATION PROTOCOL**

This Document Relates to:

ALL ACTIONS

1 WHEREAS, this litigation has been consolidated and transferred by the Judicial Panel on
2 Multidistrict Litigation (“MDL Panel”) to the above-referenced Court for pretrial proceedings; and

3 WHEREAS, it is in the interests of justice, and consistent with the Federal Rules of Civil
4 Procedure, to adopt procedures to organize discovery and minimize burdens on the parties in these
5 consolidated cases, all actions treated as “Related Cases” pursuant to Civil L.R. 3-12 that have
6 been or may be filed in this District, and any additional present and future actions transferred to
7 this Court as “tag-along actions” by the MDL Panel pursuant to Rule 7.4 of the Rules of Procedure
8 (collectively the “Batteries Cases”). All items and limitations in this translation protocol may be
9 modified for good cause shown or by agreement of the Parties.

10 THEREFORE, the undersigned parties hereby stipulate as follows:

11 **I. Overall Considerations**

12 A. This translation protocol addresses the protocol for translations and the use of
13 translated documents in the Batteries Cases. This translation protocol incorporates Section IV,
14 paragraphs E-I of the Order re Deposition Protocol, Case 4:13-md-02420-YGR, filed December 3,
15 2014 (Dkt. #593) (“Order re Deposition Protocol”) by reference. To the extent that any
16 difference between this translation protocol and the Order re Deposition Protocol exist, this
17 translation protocol shall govern.

18 **II. Certified Translations and Use of Certified Translations**

19 A. Certified translations. A certified translation should be obtained for any document
20 that contains non-English content that a Party enters into the record as an exhibit in the Batteries
21 Cases, whether at deposition, or in connection with a motion. However, documents upon which a
22 Party’s expert relies need not be translated in their entirety and only the non-English portion(s)
23 specifically relied upon require certified translation. Further, a certified translation of documents
24 appearing only in an expert’s report as a footnote, endnote, or as part of a string citation shall be
25 obtained at the discretion of the offering Party. Certified translations are not required for any
26 transactional data. The lack of a certified translation in instances where one is generally required
27 does not preclude the use of the underlying document at deposition or otherwise, provided the

1 Party has engaged in reasonable efforts to obtain the same in advance of the document's entry into
 2 the record. In these circumstances, a certified translation shall be obtained and provided to all
 3 Parties within ten business days of its entry.

4 B. Certification vendors. The Parties agree that certified translations for use in the
 5 Batteries Cases may be obtained only from one of the following professional translation vendor
 6 companies: Consortra, TransPerfect, Geotext, Park IP, or Divergent. The list may be modified by
 7 agreement of the Parties, as necessary. Translation vendor managers that work on the Batteries
 8 Cases and translators that review documents covered by the Stipulated Protective Order in the
 9 Batteries Cases, shall be required to execute Exhibit A to the Stipulated Protective Order.

10 C. Format for certification letters. All certified translations must include a notarized
 11 certification letter (by a Notary Public), which attests that the certified translation is a true and
 12 correct translation of the underlying Bates-numbered document. The certification letter must also
 13 identify the beginning and ending Bates numbers of the document being translated, as well as the
 14 original language and language of the translation, *i.e.*, Japanese to English.

15 D. Format for certified translations. Certified translations shall bear the same
 16 Confidential or Highly Confidential designation as the original, if such designation is in place as
 17 of the time that the translation is prepared. A certified translation should also share the same Bates
 18 as the original, followed with the letter "E," signifying it is a translated version of the document
 19 from the original language¹ into English. Similarly, documents translated from the original
 20 language into another language, such as an English document translated into Japanese or Korean,
 21 shall bear the suffix for the language to which the document is being translated, *i.e.*, "J" for
 22 Japanese or "K" for Korean. Because languages occupy different amounts of space to say the
 23 same thing, it may be impractical for the certified translation to be paginated in the same way as
 24 the original. Parties should ensure the Bates numbers are located in the same location within the
 25 text as would be found in the underlying document (*i.e.*, the Bates number may physically fall in
 26

27 ¹ Original language means the language in which the document was originally produced.

1 the middle of a page, rather than at bottom). Unless otherwise agreed, certified translations shall
2 use the same Bates number as the original, followed by .01, .02, etc. for any additional pages
3 required for the translated text. A certified translation may not contain independent notes that are
4 not within the text of the original document (*i.e.*, notes from the translator or counsel). Emphasis
5 in the certified translation (*i.e.*, bold, italics, underlined) must appear in the same form as in the
6 original document. However, translator notations such as “original text is in English,” “original
7 text is handwritten,” “illegible text,” or “untranslatable symbol,” may be included in brackets.

8 E. Format for certified translation of native documents. Certified translations of
9 native documents shall be formatted as close as possible to the formatting of original foreign
10 language documents. Certified translations of native documents, such as Excel spreadsheets, shall
11 identify the Bates numbers for the document, and identify each particular page or “sheet” that is
12 part of a translation, *i.e.*, “Bates (Sheet 1)” or, if the pagination carries over to more than the
13 original page, “Bates (Sheet 1.01),” etc.

14 F. Completeness of certified translations. A certified translation entered into the
15 record must be a complete recitation of the underlying foreign language original, with the
16 following exceptions: (i) for correspondence, e-mail strings and memoranda for which the
17 materials were incorrectly produced batching multiple, separate documents into a single
18 document, only pages appropriately belonging to the correspondence, e-mail or memoranda need
19 be translated; (ii) for calendars, notebooks, annual reports, financial statements and regulatory
20 findings, only relevant portions need be translated, along with the first page of the document; (iii)
21 for portions of documents that are illegible, such portions need not be translated; (iv) for Excel
22 spreadsheets, a Party may elect to translate on a sheet-by-sheet basis; or (v) the Parties agree that
23 other good reason exists and a Party provides advance notice to all other parties. Any Party may
24 obtain the translation of additional parts of a document at its own expense.

25 G. Duplicative translations. Subject to the Provisions of Section III below, once a
26 certified translation of a document is entered into the record as an exhibit at deposition or as an
27 exhibit in connection with a motion or expert report, it becomes the operative translation for the

1 entirety of the litigation. If a “duplicate” document (*i.e.*, a document that bears the same Bates
 2 number and is translated into the same language) is inadvertently translated and entered into the
 3 record at a subsequent date, the first recorded document’s certified translation shall remain the
 4 operative version, including the status of objections related to the same. Similarly, if a re-certified
 5 translation has replaced the original certified translation per the objection process outlined below
 6 in Section III, paragraph E, the re-certified version remains the operative version.

7 H. Previously certified translations. Documents that were submitted for certified
 8 translation prior to the date of this Order, need not be re-translated or re-formatted to conform with
 9 this Order, but shall be subject to the objection provisions of Section III, below.

10 I. Documents previously produced with full translations. For documents produced by
 11 Defendants with full English translations prior to the date of this Order (such as documents
 12 produced by Defendant LG Chem, Ltd. with full English translations), certified translation may be
 13 obtained at the discretion of the Party wishing to enter or use such documents. Any Party wishing
 14 to lodge any translation objections to such documents shall follow the provisions of Section III,
 15 below.

16 J. All certified translations shall be presumed to be accurate and objections to
 17 certified translations may only take place where there is a good faith belief that the translated
 18 content is inaccurate.

19 **III. OBJECTIONS TO CERTIFIED TRANSLATIONS**

20 A. Liaison counsel for objections to translations. Each of the Parties shall select one
 21 attorney to serve as its liaison counsel for purposes of objections to translations in this case
 22 (“Translation Liaison Counsel”). All Translation Liaison Counsel shall be copied on all written
 23 correspondence that relates to objections to translations. *See* Exhibit A for a list of all Translation
 24 Liaison Counsel. [Exhibit A to be attached after each party has provided liaison names.]

25 B. Coordination of translation objections and responses to certified translations. All
 26 Plaintiffs and all Defendants are required to consult and coordinate among themselves when
 27 serving objections to certified translations entered by the opposing party. For any translated

1 exhibits used by Defendants at a deposition or submitted in connection with a motion or expert
 2 report, counsel for all Plaintiff groups in this action will consult with one another, and will
 3 collectively serve one set of objections per deposition, motion, or expert report. Likewise, for any
 4 translated exhibits entered by Plaintiffs at a deposition or submitted in connection with a motion or
 5 expert report, all counsel for Defendants will consult with one another, and will collectively serve
 6 one set of objections per deposition. In addition, any objection lodged to a particular word or
 7 phrase in a translation must be collective as well. Each such collective set of objections should be
 8 served on all Translation Liaison Counsel. With respect to objections to translated exhibits used at
 9 deposition, a single set of objections should be served on Translation Liaison Counsel, as well as
 10 all in attendance at the deposition during which the certified translation was first entered. Any
 11 responses to objections will follow the same protocol. Plaintiff and Defendant parties are
 12 prohibited from lodging individual, uncoordinated objections to translations entered at a
 13 deposition. To the extent only certain parties are involved with a deposition, motion or expert
 14 report, all parties involved must coordinate to serve one set of objections and/or responses. The
 15 failure of a party to participate in this process and note its objections collectively constitutes
 16 waiver. Translation Liaison Counsel for each Party shall determine among themselves who is
 17 responsible for coordinating and properly serving the coordinated objections and/or responses for
 18 each deposition on the opposing party.

19 C. Timing for objections. Objections to the accuracy of a certified translation
 20 introduced into the record shall be asserted within 60 days of the date the translation is first used at
 21 a deposition or in connection with a motion or expert report. If the translation is first used at a
 22 deposition, all objections shall be asserted within 60 days after the date on which the deposition is
 23 provided to counsel representing the deponent for correction. If the translation is submitted in
 24 connection with a motion or expert report, the 60 days will run from the date the motion or expert
 25 report is filed with the Court or served on the Parties. If no objection is made to a certified
 26 translation within the 60-day limits outlined in this paragraph, the translation shall be deemed
 27
 28

1 accurate, and no objection to admissibility on grounds of inaccuracy of the translation will be
 2 permitted.

3 D. Objection process. Objections shall state the specific inaccuracies of the certified
 4 translation and should offer an alternative proposed translation. Parties making an objection
 5 should identify the corresponding Bates-numbered page containing the objected to-language
 6 and/or provide a red-line of the same. Upon receipt of the initial objections, all Parties should
 7 make best efforts to work in good faith to resolve the translation disputes in a timely manner. If
 8 the Parties conclude that an impasse has been reached and are unable to resolve any dispute, it
 9 may be submitted to the Magistrate for review.

10 E. Re-certification of agreed translations. After all objections to a particular certified
 11 translation are resolved, the Party that originally offered the translation will submit the document
 12 for re-certification. Once the re-certification is finalized and properly designated by the
 13 certification company as a final translation (*i.e.*, “EF” or “JF” or “KF”), it will be circulated to all
 14 identified Translation Liaison Counsel. Once a certified translation is re-certified, it will serve as
 15 the operative version of the document for all purposes going forward in the litigation. However,
 16 until such time as all objections related to a particular translation are resolved and a re-certified
 17 translation can be issued, the original, underlying translation shall continue to be entered into the
 18 record as the operative version.

19 F. The Parties may agree on adjustments to this translation protocol to promote
 20 efficiency or fairness, and advise the Court accordingly. Notwithstanding the provisions of this
 21 Order, the Court retains discretion to alter the treatment and admissibility of translated documents
 22 at trial if necessary.

23 **IV. BINDING ORDER**

24 This Order re Translation Protocol Order is binding on all Parties in the Batteries Cases,
 25 including all current or future Parties. This Order re Translation Protocol may be modified only
 26 by stipulation and order, or by order of the Magistrate or the Court for good cause shown.

27

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1 Respectfully submitted,

2 DATED: February 13, 2015

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13 **E-FILING ATTESTATION**

14 I, Aaron M. Sheanin, am the ECF User whose ID and password are being used to file this
15 document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the
16 signatories identified above has concurred in this filing.

18 _____
19 s/ Aaron M. Sheanin
20 _____
21 AARON M. SHEANIN

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

23 DATED: February 24, 2015

